January 5, 2015

Debra A. Carr, Director  
Division of Policy and Program Development  
Office of Federal Contract Compliance Programs  
200 Constitution Ave. NW, Room C-3325  
Washington, DC 20210

Via online submission


Dear Ms. Carr:

On behalf of the American Bar Association, I write to express our views in support of the above-referenced proposal to collect pay data from federal contractors and subcontractors to better target compliance and enforcement activities of the Office of Federal Contract Compliance Programs (OFCCP).

The ABA has long supported as an indispensable step to eradicating discrimination in the workplace and the justice system the systematic collection of data to measure the scope of the problem, inform public debate, and develop fact-based remedies. We believe that it is the responsibility of government to enact laws and regulations to prohibit wage discrimination and provide aggrieved individuals with effective legal tools to assert their rights, and we have advocated for decades for civil rights statutes and executive orders that provide discrimination protection.

Wage discrimination remains a present-day, widespread, and pernicious problem in the workplace. Numerous authoritative studies have concluded that wage discrimination is a significant factor in perpetuating the gender wage gap, which has barely improved over the past decade, and that it also contributes to wage disparities across various racial groups. The ability of OFCCP to identify and remedy pay discrimination in the federal contractor workforce, comprising more than 20% of all U.S. workers, therefore, is critical to closing the pay gap, which adversely affects women, families, and the economy.
The proposed Equal Pay Report will generate essential data for identifying and rectifying wage discrimination by using the framework of the existing EEO–1 Report and requiring federal contractors to submit uniform, summary employee compensation data by sex, race, and ethnicity, as well as data about the total hours worked and size of the workforce. Requiring the submission of readily available summary pay data in this format is responsive to the President’s directive to control costs and minimize compliance burdens.

In response to criticism directed at earlier initiatives, the proposed rule clearly articulates OFCCP’s plan for strategically using the data. As explained, the data will be analyzed and aggregated to establish industry level standards for pay disparities, which will be used to direct OFCCP’s limited enforcement resources toward entities for which reported pay data suggest potential pay violations. It also will be shared with federal contractors and the public, a move that is intended to raise public awareness of the existence of discriminatory pay disparities and provide important information to prospective employees; enable employers to review their own pay data, using the same metrics as OFCCP; and encourage voluntary compliance.

The ABA applauds these goals. With Congress’s continued focus on deficit reduction, fewer federal dollars will be available for discretionary domestic spending. It therefore is all the more important to take steps to focus enforcement efforts on those businesses most likely to be out of compliance. Sharing aggregated data is a powerful way to educate the public and may even help some contractors identify implicit bias as a root cause of pay disparities in their workforce. If implemented, the data that is collected and aggregated also may convince the public and Congress of the pervasiveness of wage discrimination and provide the impetus needed to enact more effective laws that will make equal pay for equal work a reality for both public and private sector workers.

The ABA commends the Office of Federal Contract Compliance for its broad-based consultation with stakeholders within and without government during the process of drafting these proposed regulations and appreciates the opportunity to submit these comments.

Sincerely,

Thomas M. Susman